The City of New York

POLICE DEPARTMENT

July 25, 2012

MEMORANDUM FOR: Police Commissioner

Re: Lieutenant Joni Marines
Tax Registry No. 897957
Mounted Unit
Disciplinary Case No. 2010-1962

The above-named member of the Department appeared before me on February 9, 2012, charged with the following:

1. Said Lieutenant Joni Marines, assigned to Mounted Unit Troop D, on or about March 31, 2009 through March 9, 2010, wrongfully engaged in unauthorized off-duty employment, to wit: said Lieutenant was employed as an Italian ice manufacturer/ distributor without having received prior Department authorization to do so, and was only granted approval for such off duty employment on March 10, 2010.

P.G. 205-40, Page 4, ADDTIONAL DATA, Paragraph (a)2 –
PERSONNEL MATTERS
OFF DUTY EMPLOYMENT

2. Said Lieutenant Joni Marines, while on duty and assigned to Mounted Unit Troop D, on or about August 18, 2009, utilized a marked RMP to drive to a Bronx location, known to the Department, to conduct personal business unauthorized by the Department. (*As amended*)

P.G. 203-06, Page 2, Paragraph 16 PERFORMANCE ON DUTY
PROHIBITED CONDUCT

3. Said Lieutenant Joni Marines, while on-duty and assigned to the Mounted Unit Troop D, on or about August 18, 2009, failed to make entries in his memobook regarding his visit to a Bronx County location to conduct personal business. (*As amended*)

P.G. 212-08, Page 1, Paragraph 1 – COMMAND OPERATIONS
ACTIVITY LOGS

4. Said Lieutenant Joni Marines, assigned to Mounted Unit Troop D, on or about and between June 1, 2010 and June 30, 2010, on several occasions engaged in off-duty employment within three hours of the start of his tour.

P.G. 205-40, Page 6, Paragraph (c)5 GENERAL PROHIBITIONS, PERSONNEL MATTERS OFF-DUTY EMPLOYMENT

The Department was represented by Chai Park, Esq. and Beth Douglas, Esq., Department Advocate's Office. Respondent was represented by James Moschella, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to Specification No. 1 and a pleaded Guilty to Specification Nos. 2 through 4. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Not Guilty of Specification No. 1.

Respondent, having pleaded Guilty, is found Guilty of Specification Nos. 2 through 4.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Lieutenant Richard Quinn as its sole witness.

Lieutenant Richard Quinn

Quinn, a member of the Special Operations Divisions Investigations Unit (SODIU) since October 2007, began investigating an allegation that Respondent was

engaged in unauthorized off-duty employment on January 2, 2010. This investigation was initiated after a complaint arrived on December 17 from Person A, who called the Internal Affairs Bureau (IAB) Command Center on behalf of her father Person B, alleging that a captain from this Department came to speak to Person B at their place of business in the Bronx. In response to her phone call, IAB Group 1 did a call out and presented Person B with a photo array. From this photo array, it was determined that the subject officer was Respondent.

On January 14, 2010, Quinn spoke to an inspector from the New York State Department of Agriculture (NYSDA), after discovering that the complaint log indicated that Respondent wished to confront Person B to inquire as to why Person B complained to NYSDA. Quinn spoke with Person C, who inspects facilities involved in the pasteurization of production, to determine whether Person C had any knowledge of Respondent. Person C informed Quinn that he was familiar with Respondent, who had purchased a business from his father-in-law. Person C, who claimed to have known Respondent for about a year, told Quinn that Respondent's role in the business (Chindo Family Ices) was plant processing supervisor. The plant processing supervisor was responsible for the sanitary aspects of ices production, maintaining communication between the state and the company, and training other individuals present to produce ices.

As part of his investigation, Quinn received a copy of a certificate that was issued by NYSDA to Respondent on August 14, 2009 for attending a class on sanitation. The proper name of the certificate was "plant superintendent certificate." Quinn also received a copy of an application for a plant processing supervisor certificate that was completed

by Respondent and signed by Person C on July 9, 2009. [Department Exhibit (DX) 1 consists of the copies of the NYSDA paperwork.]

Quinn conducted an official Department interview of Respondent on July 1, 2010. In the interview, Respondent verified that his duties were similar to those that Person C had enumerated; stating that he was responsible for ensuring all work was done in a sanitary manner. Additionally, during the interview, Respondent stated that Person C visited the plant about six times in 2009. Of those six visits, Respondent was present for three. Based on Respondent's interview statements and Quinn's observations of Respondent, Quinn determined that Respondent's duties and responsibilities at Chindo Family Ices between March 2009 and March 2010 included procuring ices, buying supplies from restaurant supply stores, delivering them to the store and unloading them, and being present in the morning to supply the vendors with the product. Respondent told Quinn that he had about 40 vendors working for him on a regular basis and that during 2009 he worked at Chindo Family Ices approximately two to two-and-a-half hours a day, five days a week.

On January 8, 2010, Quinn was informed by a member of the Employee Management Division that Respondent was not authorized to engage in off-duty employment. The only off-duty employment application in Respondent's file at the time was one that he submitted in 2002 for a network marketing position. It was not until February 12, 2010 that Respondent submitted an application to work at Chindo Family Ices. This application was approved by the Department on March 10, 2010. [DX 2 is the off-duty employment application.]

During cross-examination, Quinn stated that he did not know if Respondent was aware that he was the subject of an investigation when he filed his off-duty employment application on February 12, 2010. Quinn had not yet disclosed to Respondent that he was under investigation, and Quinn was unaware of anyone instructing Respondent to complete the application. It, thus, appeared to Quinn as though Respondent filed the application of his own volition. Respondent provided an explanation in his official Department interview as to why he filed his application in February 2010 as opposed to earlier.

Quinn confirmed that the first attempt to do an observation of Respondent at Chindo Family Ices occurred on March 20, 2010. Quinn's knowledge of Respondent's involvement in the business prior to that date was based on Respondent's own statements, conferral with a NYSDA investigator, and the statement provided by the complainant, Person A.

Respondent admitted in his interview that on days that he went to the ices plant he on average worked for two-and-a-half hours. Although he admitted to working there five days a week in 2010, the investigators never specifically asked him how many days a week he worked in 2009. Quinn agreed that, assuming Respondent worked there two and-a-half hours a day five days a week, the maximum amount of time that Respondent would have been at the company was twelve-and-a-half hours a week. The Department allows member of the service to work up to 20 hours a week at a particular employment.

Quinn confirmed that there were several occasions when he went to do observations of the location and Respondent was not there. Quinn explained that not all the observations pertained to determining Respondent's presence. None of Quinn's

observations indicated that Respondent spent more than 12 hours a week at the operation of business. Quinn had no proof that Respondent was paid for any of his time spent at the company in 2009 nor that Respondent received any compensation at all. Other than on August 18, 2009, there was no indication that Respondent was working at Chindo Family Ices while he was on duty with the Department.

Quinn did not know whether the plant processing supervisor needed to be present at all of the plant inspections. Respondent was not present at half the inspections that took place in 2009. As a result of this investigation, SODIU recommended that Respondent receive a Schedule "B" Command Discipline.

Upon further questioning, Quinn testified that on his off-duty employment application Respondent listed his duties as working 20 hours a week to help run a family business as a part-time owner, making frozen ices, picking up ingredients as needed, and picking up dry ice when needed.

Respondent's Case

Respondent testified in his own behalf.

Respondent

Respondent, a 22-year member of the Department, is currently assigned as the administrative lieutenant of the Mounted Unit. While he currently works in Manhattan, his previous assignment as a troop commander for Troop D covered the entire Bronx. As troop commander, he on average spent at least half of each day out in the field. Prior to being assigned to the Mounted Unit, Respondent was the integrity control officer (ICO)

at Police Service Areas 7 and 8. As ICO, he received off-duty employment applications and passed them on to the commanding officer. He previously worked as a detective in IAB for five years. He has never before been the subject of Department discipline.

Respondent testified that Chindo Family Ices is a business that his father-in-law started 20 years ago. He explained that the business involves the production of ices from machines called Thompson machines, which freeze liquid into a slush. The slush is subsequently frozen to an icee, similar to an Italian ice but in a steel tub. These tubs come in both three gallon and six gallon sizes. Vendors buy the tubs of ices to resell them primarily around schools at dismissal and lunch time. The business is essentially a seasonal one, running from the middle of March to September. The business is closed the rest of the year.

Respondent testified that in January 2009, his father-in-law approached Respondent's wife and suggested that she and Respondent buy the business from him. When the business started up for the season (around March 31, 2009), to get an idea of how the business operated, Respondent began to accompany his father-in-law on trips to purchase ingredients. Because they would go to just three locations, this process took only about an hour. During this period that Respondent was learning about the business, the maximum amount of time he would spend with his father-in-law on a given day was approximately an hour and a half. He would meet his father-in-law at a given location and his father in-law would explain the amount of what they were buying. On average, Respondent approximated that he was at the business at most every other day (and even that might be an exaggeration). In 2009, he put in about five hours a week. Respondent explained that he did not file an off-duty employment application at that point because he

did not believe he was conducting business. He did not receive any compensation at all from Chindo Family Ices from March 31 until the time it closed for the season in September 2009. He was not getting paid, handling money, or representing the company as the owner until 2010. Prior to 2010, the only time that Respondent submitted an off-duty employment application was for an insurance position in 1998.

Respondent only began receiving compensation from Chindo Family Ices in 2010 after he took control of the business from his father-in-law. He filed an application for off-duty employment in February 2010, a month before work began for the season. He explained that he submitted the application in 2010, and not in March 2009, because it was not until 2010 that he and his wife decided to buy the business. In 2009, the business still belonged to his father-in-law. Additionally, he did not consider what he was doing in 2009 to be employment that would evoke the necessity to complete an application. He opened the business for the season only after his request for off-duty employment was approved.

In July 2009, Respondent attended a NYSDA course on sanitation. He had to submit an application to take the two-hour class, and he received a certificate upon its completion. While the NYSDA paperwork refers to Respondent's position as processing plant superintendent, Respondent explained that this was a NYSDA term. In actuality, there is no such position at Chindo Family Ices. [The application and certificate were previously entered into evidence as DX 1.] During the 2009 season, a NYSDA inspector visited the business six times. Respondent happened to be present on three of those occasions. That was the extent of his interaction with NYSDA.

Respondent knew Person B as "Don Person B, the godfather of icees." Respondent explained that Person B started the ices industry in 1978. On August 18 2009, Person B called Respondent on his personal cell phone while Respondent was at work at Troop D. Person B implored Respondent to come see him, claiming that the meeting would take only a few minutes. Respondent went to see Person B that day, explaining, "[Person B] has been in business a long time, more clever than me. . . . This is a business I might get into and this is the godfather, and he is calling you. It is almost like having a talk show and Oprah Winfrey calls you and says, 'I want to talk to you.'" At the time, Respondent was on patrol in a marked Department vehicle (RMP) within the confines of the 40 Precinct, which was the area of Person B's business. Respondent drove to Person B's place of business and remained there for 15 to 25 minutes. Unbeknownst to Respondent, his father-in-law was not on speaking terms with Person B at the time.

As a result of Person B's allegations against him, Respondent has been transferred. For the past year he has been unable to earn chart days, night differential, or overtime. Furthermore, because of his hours at his new command, he is unable to attend to the ices business and is looking to sell the company. His off-duty employment application was approved by the Department in March 2010, and he has submitted a new application every year since that time. His applications have always been approved.

Respondent conceded that going to visit Person B was a big mistake for which he accepts responsibility. As for his activity at Chindo Family Ices, he explained that he did not consider himself to be employed by the business in 2009. His intention during that

period was to learn more about the business and determine whether or not it was worth purchasing. He was there to learn and observe.

Upon cross-examination, Respondent testified that he purchased the business from his father-in-law in March 2010. In his official Department interview, however, Respondent indicated that his wife purchased the company in March 2009. Respondent explained that there was no exchange of money in 2009, and he should have been clearer at the interview. Respondent's attorney and his union delegate were present at the interview, and Quinn warned Respondent beforehand that false statements would result in discipline. [DX 3 is the interview transcript.]

Respondent claimed that he took the food preparation course as a learning experience. He did not specifically take the course to become a processing plant superintendent. He signed his application for the course underneath a statement that read, "I am familiar with the sanitation regulations applicable to my place of employment." He did not cross out the word "employment" and replace it with "internship," "apprenticeship," or "volunteer experience." He was aware that the application was going to NYSDA, which is a government entity.

Respondent confirmed that he was named the processing plant superintendent of Chindo Family Ices in 2009. The processing plant superintendent is the person who is held accountable for the sanitary condition at the plant and who answers questions from NYSDA inspectors. Respondent took his position seriously because he wanted to make sure that the manufacturing plant met the State's sanitary guidelines. The company passed all six inspections in 2009.

Respondent reiterated that he did not get paid for the time that he put in at Chindo Family Ices in 2009. He asked neither his father-in-law nor his wife for payment. Respondent acquired business debt when he purchased the business in 2010. Respondent paid his father-in-law through a business account that was established in March 2010. Although Respondent learned how to make ices in 2009, he was not actually responsible for making any that year. After becoming the company owner in 2010 he took on more responsibilities.

Upon redirect examination, Respondent denied working 20 hours a week in 2009. He was neither part-owner nor made ices during that year. All he did that year was help his father-in-law pick up ingredients. He did not have any obligation to the business. It was only after becoming part-owner in 2010 that all responsibility for the business fell on his shoulders.

He did not pay his father-in law in a lump sum payment. They agreed that starting in March 2010 Respondent would give his father-in-law a share of the weekly profit. Respondent is still in the process of paying for the company. In his official Department interview, when he indicated purchasing the business in 2009, he was referring to his wife's plan to purchase the company, not what actually happened. When he indicated that he worked up to two-and a-half hours a day, he did not mean that he was at the plant that entire time. That time would have included going to the store to purchase supplies. Respondent did not have a set schedule.

Upon further questioning, Respondent clarified that both he and his father-in-law served as processing plant superintendent in 2009. He reiterated that he took the course

as a learning experience. Had he not taken the class, it would not have impacted the business operations in 2009.

FINDINGS AND ANALYSIS

Specification No. 1

Respondent stands charged herein in that he wrongfully engaged in unauthorized off-duty employment, to wit: said Lieutenant was employed as an Italian ice manufacturer/distributor without having received prior Department authorization to do so, and was only granted approval for such off-duty employment on March 10, 2010.

Evidence adduced at trial established that Respondent was approached by his father-in-law to take over his Italian ice business in January 2009. Respondent testified that when the business started up for the season in March 2009, he decided that he would accompany his father-in law on trips to purchase ingredients to get a sense of what the business entailed and whether it would be a profitable venture for him and his family. He said that he would meet his father-in law almost every day for about and hour to an hour an a half each day. He estimated that he spent about five hours a week learning the business. Respondent said that he did not complete an off-duty employment application with the Department at that time for several reasons. One, he was not getting paid for his time to learn the business. Respondent testified that he received no compensation whatsoever from Chindo Family Ices from March 31, 2009 (when the company opened for business for the season) until September 2009 (when it closed for business for the season). Two, he had not decided whether he would take over the business and had not

done so at that time. Third, he was not an employee of the company in that he was not getting paid, handling money or representing the company as the owner in 2009.

Respondent testified that he began to receive compensation from the company when he took control of the business from his father-in-law in 2010. It was at that time that he submitted an off duty employment application with the Department. Respondent filed the application in February 2010, a month before the Italian ice season would begin and was approved the following month.

Respondent acknowledged that he took a food preparation course offered by the New York State Department of Agriculture (NYSDA) for his own edification in 2009. He denied that he took the course so that he could become the processing plant supervisor at the company. He explained that his decision to take the course did not effect the company and when the NYSDA came to the company to do its six inspections in 2009, he was only present for three of the inspections, yet the company passed all six inspections.

It is the belief of this Court that Respondent was not employed by Chindo Family Ices in 2009 and therefore was not under any obligation at that time to file an off-duty employment application. This Court has held that to establish off-duty employment, an employer-employee relationship must be established. [See Disciplinary Case No. 2011/10 signed January 5, 2012.] Respondent was not paid by the company, not an employee of the company, although he did shadow his father-in-law during the Italian ice season a year in advance to see how the company was run before deciding to purchase it from his father-in-law in 2010. In addition, Quinn, the investigator on the case

determined that there was no evidence that Respondent was paid for his time at Chindo Family Ices in 2009 or that he received any type of compensation in 2009.

Accordingly, Respondent is found Not Guilty of Specification No. 1.

Specification Nos. 2 and 3

Respondent stands charged herein in that while on duty, on or about August 18, 2009, he utilized a marked RMP to drive to a Bronx location to conduct personal business. He is also charged with failing to make entries in his Activity Log regarding his visit to a Bronx County location on personal business. Respondent pleaded Guilty to these Specifications. Respondent acknowledged that on said date, he went to speak to Person B, the man who started the ices industry. He drove his marked RMP to Person B's place of business and remained there for 15 to 25 minutes. Person B later made threat allegations against Respondent which Respondent denied, but which led to the commencement of this case. Respondent also acknowledged that he failed to make an entry in his Activity Log regarding the visit.

Accordingly, because Respondent pleaded Guilty, it is recommended that Respondent be found Guilty of Specification Nos. 2 and 3.

Specification No. 4

Respondent stands charged herein in that on or about and between June 1, 2010 and June 30, 2010, he, on several occasions, engaged in off-duty employment within three hours of the start of his tour. Respondent pleaded Guilty to this Specification. Respondent acknowledged that once his application for off-duty employment with

Chindo Family Ices was approved on March 10, 2010, he did, in fact, work for the company, sometimes two-and a-half hours a day. He acknowledged that sometimes he worked purchasing supplies and doing other things related to the business and that it may have occurred within three hours of the start of his tour.

Accordingly, because Respondent pleaded Guilty, it is recommended that Respondent be found Guilty of Specification No. 4.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974).

Respondent was appointed to the Department on October 15, 1990. Information from his personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

Respondent has pleaded Guilty to utilizing a marked RMP to drive to a location to discuss personal business; failing to make entries in his Activity Log regarding said visit; and between June 1, 2010 and June 30 2010 on several occasions, engaging in off-duty employment within three hours of the start of his tour.

The Assistant Department Advocate (Advocate) asked for a penalty of the forfeiture of 25 vacation days. To support this offer, the Advocate offered the fact that Respondent spent several hours at Chindo Family Ices gaining valuable experience and skills and thus this should amount to employment. The Court disagrees. As noted earlier, to establish off-duty employment, an employer-employee relationship must be established. Respondent was not paid for his time and the Court did not find that his time

learning the Italian ice trade and gaining valuable skills amounted to off duty employment. To support these findings, the Court cites two cases. In Disciplinary Case No. 84081/08, signed August 11, 2011, a 17-year lieutenant was found Not Guilty of engaging in unauthorized off-duty employment when he worked as a "corner man" during a boxing event. Although Respondent in that matter received valuable experience and skills, he was not compensated financially for his participation. In Disciplinary Case No. 2010-2011, signed January 5, 2012, a 16-year detective was found Not Guilty of engaging in unauthorized off-duty employment when he appeared at a booth at bodybuilding expositions. This Court held that Respondent's activities at the expositions (standing at the booth, taking pictures, signing autographs) were consistent with his hobby as an amateur bodybuilder. This Court also held that while this activity certainly brought personal benefit to that Respondent (free airfare and hotel, building his fan base, networking to further his potential post Department career); no employer-employee relationship was established in that case.

Accordingly, based on Respondent's record and his 22 years of service to this Department, I recommend that he forfeit 15 vacation days.

Respectfully submitted,

Claudia Daniels-DePeyster
Assistant Deputy Commissioner-Trials

APPROVED
DEC 10 2012
RAYMOND W. KELLY
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
LIEUTENANT JONI MARINES
TAX REGISTRY NO. 897957
DISCIPLINARY CASE NO. 2010-1962

In 2010, 2011 and 2012, Respondent received an overall rating of 4.5 "Above Highly Competent" on his annual performance evaluations. Respondent has received no medals in his career to date.

[redacted]

Respondent has no prior formal disciplinary record.

For your consideration.

Claudia Daniels-DePeyster
Assistant Deputy Commissioner [redacted] Trials